



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**FINAL DECISION**

**November 19, 2013 Government Records Council Meeting**

Stanley T. Baker, Jr.  
Complainant

Complaint No. 2013-143

v.

NJ State Parole Board  
Custodian of Record

At the November 19, 2013 public meeting, the Government Records Council (“Council”) considered the November 12, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that there is no requirement that payroll records must include a description or justification of the work performed, and that information pertaining to or which may reveal the duty assignments of law enforcement officers are exempt from OPRA. Therefore, the Custodian bore her burden that she lawfully denied access to the records under N.J.S.A. 47:1A-6, N.J.A.C. 12:16-2.1; N.J.A.C. 13:1E-3.2(a)(7).

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.



Final Decision Rendered by the  
Government Records Council  
On The 19<sup>th</sup> Day of November, 2013

Robin Berg Tabakin, Esq., Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: November 21, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 19, 2013 Council Meeting**

**Stanley T. Baker, Jr.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-143**

v.

**New Jersey State Parole Board<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** I would like the overtime justifications for: Eric Gorecke (2/12), Dominic Yacovelli (2/22/13), James Jones (1/7/13, 1/30/13, 2/1/13), Anthony Smith (2/24/13, 2/26/13), Leslie Williams (2/19/13, 2/23/13, 2/24/13, 2/26/13, 2/26/13, 3/17/13) and Kevin Thurlow (3/17).

**Custodian of Record:** Dina I. Rogers, Esq.

**Request Received by Custodian:** May 10, 2013

**Response Made by Custodian:** May 14, 2013

**GRC Complaint Received:** May 20, 2013

**Background<sup>3</sup>**

**Request and Response:**

On May 10, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 14, 2013, two (2) business days later, the Custodian responded in writing denying the Complainant’s request on the grounds that “overtime justifications” are part of an employee’s personnel records and is therefore exempt from disclosure under N.J.S.A. 47:1A-10. Further, the Custodian asserted that “overtime justifications” are not payroll records as defined under N.J.A.C. 12:16-2.1.

**Denial of Access Complaint:**

On May 20, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that he made a prior OPRA request to the Custodian seeking payroll timesheets for employees at the State of New Jersey Parole Board (“Parole Board”). The Complainant states that in response to the prior OPRA

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by DAG Christopher Josephson.

<sup>3</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

request he was provided access to redacted timesheets. Further, the Complainant provides that in reviewing the timesheets, he noticed several parole officers received overtime pay, and inquired of Custodian via email for overtime justifications for those officers. On May 3, 2013, the Custodian responded to the Complainant via email that overtime justifications were exempt from disclosure for the reasons set forth above.

The Complainant then filed the May 10, 2013 OPRA request. The Complainant argues that overtime justifications should be subject to disclosure pursuant to Weimer v. Twp. of Middletown, GRC Complaint No. 2004-22 (August, 2005). The Complainant, in turn argues that overtime justifications are a component of the timesheets he has received and should therefore be considered a “payroll record” subject to disclosure. On May 15, 2013, the Custodian denied the Complainant’s request prompting the filing of the instant matter.

Statement of Information:

On June 5, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that after responding to the Complainant’s prior OPRA request, the Complainant inquired via email whether he could obtain records of “overtime justifications” of the personnel listed above. The Custodian denied the Complainant’s request on the grounds that “overtime justifications” are exempt from disclosure under OPRA and that they do not constitute a “payroll record” under N.J.A.C. 12:16-2.1.

Further, the Custodian certifies that she received the Complainant’s current OPRA request on May 13, 2013. The Custodian certifies that she responded to the Complainant via email on May 14, 2013, reiterating the same basis for denying the Complainant’s request for overtime justifications of the parole officers.

The Custodian argues that N.J.S.A. 47:1A-10 specifically excludes personnel and pension records from disclosure, with exceptions of names, titles, positions, salaries, payroll records, length of service, etc. The Custodian notes that OPRA does not define the term “payroll record.” The GRC has, in interpreting the term, looked to the definition in the Department of Labor regulations, specifically N.J.A.C. 12:16-2.1. See Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February, 2004). The Custodian contends that pursuant to the definition of “payroll record” in N.J.A.C. 12:16-2.1, there is no requirement that payroll records shall include a description of work performed or a justification for the work performed, and thus “overtime justifications” do not qualify as a component of a payroll record.

The Custodian argues that under the timekeeping system “eCATS,” there is a field denoted “Describe Overtime” in which an employee selects and is able to describe the purpose of their overtime pay. This description is used by supervisors to determine whether to approve overtime. The Custodian certifies that the overtime justification entered in eCATS describes the specific duty or work assignment completed by the employee. The Custodian therefore contends that because the definition of “payroll record” under N.J.A.C. 12:16-2.1 does not require justifications for work performed, such information is a personnel record outside the scope of a “payroll record” and not subject to disclosure pursuant to OPRA.

In addition, the Custodian argues that several state law enforcement agencies within the Department of Law and Public Safety (“Department”), exclude overtime data pertaining to individual law enforcement officers from disclosure. The Custodian points to N.J.A.C. 13:1E-3.2, where it exempts from OPRA the duty assignments of individual law enforcement personnel or information that may reveal such information, *including overtime data pertaining to an individual law enforcement officer*. N.J.A.C. 13:1E-3.2(a)(7) (emphasis added).

### Analysis<sup>4</sup>

#### Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

OPRA also provides that payroll records are government records subject to disclosure. N.J.S.A. 47:1A-10. In Jackson, the Council undertook the task to define the term “payroll record” as follows:

Neither OPRA nor Executive Order #11 defines the term ‘payroll record.’ Thus, we look to the ordinary meaning of that term, and are informed by other regulatory provisions defining that phrase. ‘Payroll’ is defined as a list of employees to be paid and the amount due to each of them. Black's Law Dictionary (7th Ed., 1999). It is also clear that documents included within the payroll record exception are, in part, records required by law to be maintained or reported in connection with payment of salary to employees and is adjunct to salary information required to be disclosed. In this regard, N.J.A.C. 12:16-2.1, a Department of Labor regulation entitled ‘Payroll records,’ requires the following:

Every employing unit having workers in employment, regardless of whether such unit is or is not an "employer" as defined in the Unemployment Compensation Law, shall keep payroll records that shall show, for each pay period:

1. The beginning and ending dates;
2. The full name of each employee and the day or days in each calendar week on which services for remuneration are performed;
3. The total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum

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<sup>4</sup> There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

wage rate prescribed under applicable laws of this State or of the United States or the amount of remuneration actually received by the employee from his employing unit, whichever is the higher; and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;

4. The total amount of all remuneration paid to all employees;
5. The number of weeks worked.

Jackson, GRC No. 2002-98.

In Weimer, the complainant requested “daily work sheets,” which included “assignments, date and time spent on assignments, overtime and reason for overtime.” GRC No. 2004-22. The custodian argued that because daily work sheets are separate from payroll records, they are classified as personnel records not subject to disclosure. Id., *ref.* N.J.S.A. 47:1A-10. The Council found that “it is reasonable that attendance, overtime and compensatory time records are within the realm of payroll records.” Additionally, the Council found that although such information may be in an officer’s personnel file, it should not be exempt under the personnel exemption of OPRA. Id. The Council concluded that “the content of the record is applicable . . . and not the potential location of the record.” Id.

Furthermore, the custodian in Weimer argued that such information, if disclosed, could impact the “security and safety” of the investigating officer and the investigation itself, particularly investigations into terrorist and/or majority criminal activities. Id., *ref.* N.J.S.A. 47:1A-1.1, Executive Order No. 9 (Hughes, 1963), and Executive Order No. 21 (McGreevey, 2002). The Council, however, held that because the custodian did not address whether such records could have been redacted, in whole or in part, the custodian did not meet its burden under N.J.S.A. 47:1A-1, *et seq.*, to deny access to those records on that basis. Id.

N.J.A.C. 13:1E-3.2 was adopted by the Department in 2011 as rules reflecting the exemptions listed under EO 9 and EO 21. *See* 42 N.J.R. 2569(a). Regarding section (a)(7), the Department stated that “general overtime information is made available to the public, but individual information could be used to determine a particular assignment or investigative activity that would put lives at risk.” 43 N.J.R. 3188(b).

In Weimer, overtime information was contained in “overtime cards” separate from payroll records. GRC No. 2004-22. Whereas, in the instant case, the eCATS timesheets produced contained general overtime information, such as the amount of overtime and the dates conducted. As such, the Custodian had already provided the Complainant the same overtime information sought in Weimer. By contrast, Weimer does not support the Complainant’s assertion that a payroll record includes “reasons for overtime” or a justification of work performed within the definition under N.J.A.C. 12:16-2.1.

Furthermore, the Custodian certifies that the information parole officers provide in eCATS to justify their overtime pertains specifically to their duty assignments. The language of

N.J.A.C. 13:E-3.2(a)(7) explicitly exempts such information from disclosure, which includes information contained in overtime data of individual law enforcement officers.

There is no requirement that payroll records must include a description or justification of the work performed, and that information pertaining to or which may reveal the duty assignments of law enforcement officers are exempt from OPRA. Therefore, the Custodian bore her burden that she lawfully denied access to the records under N.J.S.A. 47:1A-6. N.J.A.C. 12:16-2.1; N.J.A.C. 13:1E-3.2(a)(7).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that there is no requirement that payroll records must include a description or justification of the work performed, and that information pertaining to or which may reveal the duty assignments of law enforcement officers are exempt from OPRA. Therefore, the Custodian bore her burden that she lawfully denied access to the records under N.J.S.A. 47:1A-6. N.J.A.C. 12:16-2.1; N.J.A.C. 13:1E-3.2(a)(7).

Prepared By: Samuel A. Rosado, Esq.  
Staff Attorney

Approved By: Brandon D. Minde, Esq.  
Executive Director

November 12, 2013